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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,891	11/04/2003	Mayu Yamada	244823US90	3487

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

SAFAIPOUR, BOBBAK

ART UNIT	PAPER NUMBER
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2618

NOTIFICATION DATE	DELIVERY MODE
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02/26/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/699,891

Applicant(s)

YAMADA ET AL.

Examiner

Bobbak Safaipour

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5, 6 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-6, 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Action is in response to Applicant's response filed on 10/08/2007. Claims 3-4, and 7-8 have been cancelled. New claims 13 and 14 have been added. **Claims 1-2, 5-6, and 9-14** are now pending in the present application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/08/2007 has been entered.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

In the present application, Applicant essentially argues that Hayama fails to teach or suggest that the mobile communication system includes "a determination unit configured to determine at least one layered data to be transmitted from base stations to mobile stations for respective radio areas, with reference to the holding unit, based on area resource information concerning radio resources for the respective radio areas covered by the base station" as recited by independent claim 1.

Examiner respectfully disagrees. Hayama provides an information delivery system which may vary an information amount and the quality of service received by the use according

to the radio circumstances of the mobile station as considering any interference to be given to another communication in the multicast or broadcast information delivery in which the same information is delivered to all users (read as based on area resource information) That is, the information delivery system may be designed so that the mobile station under the bad wave circumstances enables to deliver the information with the highest priority to be inevitably delivered, while the mobile station under the good wave circumstances enables to receive the information with the higher priority and the additional information. (col. 1, lines 44-67; col. 3, lines 1-43; read as based on area resource information)

Hayama discloses data arrangement of an information database located inside a contents server. The information database (read as holding unit) includes multimedia information such as a still picture, voice, and a moving picture. The multimedia information is managed on the information unit to be delivered to the mobile station at a time. (figure 2; col. 5, lines 29-48) The information database is composed of delivery informations, such as news or a still picture to be delivered to the mobile station at a time (read as determine at least one layered data to be transmitted from base stations to mobile stations). Likewise, the accounting is performed on the information unit like the delivery information to be delivered to the mobile station at a time. It means that the response to one transmission request or one program request from the mobile station is defined as one unit. The delivery information includes the information pieces layered according to the significance or the priority of each information piece. Each of these layers has an ID for identifying which information is associated and a header for indicating the priority. (figure 2; col. 5, lines 29-48)

In the contents editor, the highest significance or priority is assigned to the information to be positively to the user. The other informations are layered as the additional information and are accumulated in the information database. If the layer has a header with a digit of "1", it means that the highest significance is given to the layer. As the digit of the header is made higher, the significance is made lower. That is, according to the wave circumstances of the mobile station, the mobile station may receive only the layer with the highest significance or priority or may receive the layer with the highest significance or priority and one or more additional information layers (read as based on area resource information). In the information delivery system according to this embodiment, with an example of the delivery information, the layer 1 is assumed to be the layer having the information with the highest significance or priority. As the digits added to the layers are made higher such as in the sequence of the layer 2, the layer 3 and the layer 4, the significance or priority is made lower. In this embodiment, all the layers except the layer 1 are collectively called additional information. (figure 2; col. 5, lines 49-67)

The recited claim language is given the broadest reasonable interpretation. As a result, the argued features are written such that they read upon the cited references; therefore, the previous rejection still applies.

Claim Objections

On line 4 of claim 2, insert --determine-- before “at least one layered data” and after “a determination unit configured to”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 5-6, and 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by **Hayama et al (US 7,006,484)**.

Consider **claim 1**, Hayama et al disclose a mobile communication system comprising:

- a holding unit configured to hold layered data and data indicating an amount of radio resources required for transmitting the layered data (figure 2; col. 5, lines 29-48);
- a determination unit configured to determine at least one layered data (figures 2-4, 7A-7D; col. 2, lines 1-13, col. 5, line 49 to col. 6, line 37; read as layered information) to be transmitted from base stations to mobile stations for respective radio areas (col. 2, lines 14-17; read as plural mobile stations and plural base stations), with reference to the holding unit, based on area resource information concerning radio resources for the respective radio areas covered

by the base stations (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37; allocating the frame with a higher transmission priority to a channel with better communication quality in which factors such as transmission power and diffusion ratio are adjusted); and

a radio transmitter configured to transmit the at least one layered data determined by the determination unit from the base station to the mobile stations (col. 2, lines 12-13).

Consider **claim 2**, Hayama et al disclose a radio network controller comprising:

a holding unit configured to hold layered data and data indicating an amount of radio resources required for transmitting the layered data (figure 2; col. 5, lines 29-48);

a determination unit configured to determine at least one layered data (figures 2-4, 7A-7D; col. 2, lines 1-13, col. 5, line 49 to col. 6, line 37; read as layered information) to be transmitted from base stations to mobile stations for respective radio areas (col. 2, lines 14-17; read as plural mobile stations and plural base stations), with reference to the holding unit, based on area resource information concerning radio resources for the respective radio areas covered by the base stations (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37; allocating the frame with a higher transmission priority to a channel with better communication quality in which factors such as transmission power and diffusion ratio are adjusted); and

a data transmitter configured to transmit the determination by the determination unit to the respective base stations (col. 2, lines 12-13).

Consider **claim 6**, Hayama et al disclose a base station comprising:

a holding unit configured to hold layered data and data indicating an amount of radio resources required for transmitting the layered data (figure 2; col. 5, lines 29-48);

a determination unit configured to determine at least one layered data (figures 2-4, 7A-7D; col. 2, lines 1-13, col. 5, line 49 to col. 6, line 37; read as layered information) to be transmitted to mobile stations for respective radio areas (col. 2, lines 14-17; read as plural mobile stations and plural base stations), with reference to the holding unit, based on area resource information concerning radio resources for the respective radio areas covered by the base stations (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37; allocating the frame with a higher transmission priority to a channel with better communication quality in which factors such as transmission power and diffusion ratio are adjusted); and

a radio transmitter configured to transmit the at least one layered data determined by the determination unit from the base station to the mobile stations (col. 2, lines 12-13).

Consider **claim 10**, Hayama et al disclose a base station comprising:

a notification unit configured to notify a radio network controller of area resource information concerning radio resources for respective radio areas covered by the base station (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37; allocating the frame with a higher transmission priority to a channel with better communication quality in which factors such as transmission power and diffusion ratio are adjusted);

a data receiver configured to receive at least one layered data for the respective radio areas transmitted from the radio network controller based on the area resource information notified by the notification unit (col. 2, lines 1-13, col. 5, line 49 to col. 6, line 37); and

a radio transmitter configured to transmit the data at least one layered received by the data receiver to the mobile stations for the respective radio areas (col. 2, lines 12-13).

Consider **claim 12**, Hayama et al disclose a communication method used in mobile communication system which comprises a holding unit configured to hold layered data and data indicating an amount of radio resources required for transmitting the layered data (figure 2; col. 5 line 29 to col. 6, line 36), the communication method comprising:

determining at least one layered data to be transmitted from base stations to mobile stations for respective radio areas, with reference to the holding unit based on area resource information concerning radio resources for the respective radio areas covered by the base stations (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37; allocating the frame with a higher transmission priority to a channel with better communication quality in which factors such as transmission power and diffusion ratio are adjusted); and

transmitting the at least one layered data determined in the determining step to the mobile stations (col. 2, lines 12-13).

Consider **claim 5**, and as applied to **claim 2** above, Hayama et al disclose the claimed invention wherein a resource information receiver configured to receive the area resource

information from the base stations, wherein the determination unit is configured to determine the at least one layered data based on the area resource information received by the resource information receiver (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37).

Consider **claim 9**, and as **applied to claim 6 above**, Hayama et al disclose the claimed invention wherein a resource information collection unit configured to collect the area resource information, wherein the determination unit is configured to determine the at least one layered data, based on the area resource information collected by the resource information collection unit (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37).

Consider **claim 11**, and as **applied to claim 10 above**, Hayama et al disclose the claimed invention wherein a resource information collection unit configured to collect the area resource information, wherein the notification unit notifies of the area resource information collected by the resource information collection unit. (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37)

Consider **claim 13**, and as **applied to claim 2 above**, Hayama et al disclose the claimed invention wherein the area resource information is at least one of radio resources capacity for the respective radio areas covered by the base stations and radio resources amount currently available for the respective radio areas. (figures 2-4, 7A-7D; col. 1, lines 44-67; col. 2, lines 1-13, 25-43; col. 3, lines 1-43; col. 5, line 49 to col. 6, line 37)

Consider **claim 14**, and as applied to **claim 10** above, Hayama et al disclose the claimed invention wherein the area resource information is at least one of radio resources capacity for the respective radio areas covered by the base station and radio resources amount currently available for the respective radio areas. (figures 2-4, 7A-7D; col. 1, lines 44-67; col. 2, lines 1-13, 25-43; col. 3, lines 1-43; col. 5, line 49 to col. 6, line 37)

Conclusion

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

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Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bobbak Safaipoor whose telephone number is (571) 270-1092. The Examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lana Le can be reached on (571) 272-7891. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.


Bobbak Safaipoor
B.S./bs

December 21, 2007


12-26-07
LANA LE
PRIMARY EXAMINER